IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C.No.1274/2001

Arvind Saraf ..... Petitioner
! through: Mr.D.K.Sabat, Advocate

VERSUS

$ Inspector of Factories & Ors. ..... Respondents
^ through: Mr.Pawan Sharma for State

% **D**ATE OF DECISION: 12-09-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.
*

1. Petitioner prays that the complaint against the petitioner by the Inspector of Factories (Copy at page 15-16) be quashed.

2. Complaint in question has been filed under Sections 28, 31,61, 62 and 292 of the Factories Act, 1948 alleging various breaches listed in para 4 of the complaint. It is stated in the complaint that the breaches stated in para 4 of the complaint were reported by the Inspector who visited the factory of the petitioner on 13.8.1997 at 11.45 AM.

3. According to the petitioner, Hon'ble Supreme Court had passed directions on 26.11.1996 in CW(P) No.4677/1985

M.C.Mehta Vs. UOI directing that certain industries be closed down in the Union Territory of Delhi by 31.3.1997. It is stated that the factory of the petitioner was wrongly directed to be closed. Petitioner approached Hon'ble Supreme Court praying that direction contained in the order dated 26.11.1996 be recalled. That unfortunately, review application was dismissed. That on 19.6.1997, Delhi Pollution Control Committee directed closure of the unit.

4. Accordingly, petitioner claims that on 13.8.1997 the factory was lying closed. That Shri K.L.Meena, the Factory Inspector made a surprise visit and filed the complaint without giving a reasonable opportunity to the petitioner to clarify the factual matrix.

5. Filing response to the petition, in para 3 of the reply filed by the respondent, it is stated as under :-

> "3. That on the basis of the aforesaid complaint dated 11.8.97, the respondent Inspector of Factories carried out inspection of the Petitioner's factory i.e. M/s. S.K.S. Limited located at above address on 13.08.1997 at 11.45 a.m. At the time of aforesaid inspection the factory of the Petitioner was found working. The respondent Inspector of Factories prepared the Inspection Report, a photocopy of which is annexed hereto and marked as **Annexure R-2.**
>
>
>
> That during the course of inspection Sh. D.Bhattacharya, Chief Executive (Operation) and Sh. K.Pathak, Sr. Officer from HRD of M/s. S.K.S. Limited were also present on behalf of the management and Sh. Bhattacharya, Chief Executive (Operation) had signed the Inspection Form along with Sh. Shambhu Sharma who was a contractor employed by the company

M/s. S.K.S. Limited for packing, dispatch and carpentry.

At the time of inspection, it was observed by the respondent Inspector of Factories that 180 workers were employed and working in different shift/timing in the factory M/s. S.K.S.Limited and engaged in the manufacturing process comprising of copper and brass foils making etc."

6. In the rejoinder filed, petitioner has responded as under :-

"3. **As to para 3.** It is vehemently denied that the unit of M/s. SKS Limited found working on the date of inspection on 13.08.1997 at 11.45 am. It is respectfully submitted that the unit was closed and there was no industrial activity under operation at the unit and even no electricity and water facilities were available, the employees/workers were not regularly coming and attending M/s. SKS Limited and as such when the factory inspector visited the factory the available employees/workers could not provide them the requisite details/documents to the concerned officer of the Respondent and they requested for some time so that the competent persons be called to provide the detail/documents to the Inspector of Factories. It is submitted that the respondent without appreciating the facts and circumstances, choose to file complaint against the Petitioner as he was the occupier of M/s. SKS Limited. It is submitted that the Respondent even has not considered the past clean record of the petitioner.

It is respectfully submitted that the visit of the Respondent was based upon the complaint dated

11.08.1997 wherein the Bhartiya Mazdoor Sangh (Delhi Branch) alleged that the petitioner is not following the labour laws and order of Hon'ble Supreme Court. It is respectfully submitted that for the said allegations the Chief Factory Inspector is not a competent Authority and even the Inspector of Factories has not filed any case of such nature. It is submitted that the complaint of Bhartiya Mazdoor Sangh was an attempt to make personal gains out of the situation at a time when M/s. SKS Limited was fighting for its survival. That without admitting the contents of the Annexure R-1, it is submitted that even the Bhartiya Mazdoor Sangh has mentioned in their complaint that the units are not

> functioning from 8.00 AM to 4.00 PM, therefore, the submissions made by the Respondent that on 13.08.1997 when they visited unit of M/s. SKS Limited at 11.45 AM, the unit found working, are contradict from their own records. Therefore, the entire submissions of Respondent are baseless, vague and misleading."

7. Annexure R-2 referred to in para 3 of the counter affidavit filed by the respondent is the Inspection Report dated 13.8.1997. Indeed, Shri D.Bhattacharya, Chief Executive (Operation) and Shri K.Pathak, Senior Officer from Human Resource Department of the petitioner were present and have seen the inspection report.

8. They have not recorded on the inspection note that the factory was lying closed pursuant to the directions issued by the Supreme Court.

9. I eschew from considering the documentary evidence placed on record by the petitioner or the respondent for the

reason issue needs trial.

10. Suffice would it be to state that on a disputed question of fact, complaint cannot be quashed. I further note that in the rejoinder filed by the petitioner to the reply filed by the respondent, petitioner has not even attempted to explain Annexure R-2 filed by the respondent.

11. Whether or not the unit was operational is a question of fact requiring evidence.

12. The petition is dismissed.

September 12, 2007 **PRADEEP NANDRAJOG, J.**
vg